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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,010	05/24/2001	Stephen S. Macey	WAT5-BI35	3794
21611	7590	07/13/2005	EXAMINER	
SNELL & WILMER LLP 1920 MAIN STREET SUITE 1200 IRVINE, CA 92614-7230			BANGACHON, WILLIAM L	
			ART UNIT	PAPER NUMBER
			2635	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/865,010	<b>Applicant(s)</b> MACEY, STEPHEN S.	
	<b>Examiner</b> William Bangachon	<b>Art Unit</b> 2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-15, 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The specification is amended to include the serial number of the related application and therefore the objection to the specification is withdrawn.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 2-21 have been considered but are moot in view of the new ground(s) of rejection.
3. In response to applicant's argument (page 17, 1<sup>st</sup> paragraph) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., The remote control of the present invention is able to change the functionality of the relationship between the remote control and main control by simply changing the functionality of the main control, i.e. the programming) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, the claims are broader than what applicant argues since the claims are not directed to programming the functionality of the relationship between the remote control and main control.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 2-15 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2002/0070875 (Crumb).

In claim 21, Crumb teach of a spa system (10) including a remote control (12) for controlling operation of a spa, said system comprising:

a remote control (12) comprising: a microprocessor (18) and memory (not shown), a mode button (24), a plurality of control buttons (24), a display (26), and a first antenna (16) for transmitting signals to said spa and for receiving signals from said spa [0018, 0032];

a main control (14) at the spa for controlling and sensing a multiplicity of functions of said spa [0039] comprising a second antenna (30) responsive to command signals received from said remote control (12) and for transmitting status signals back to said remote control, said slave control module (30) being disposed for converting said command signals received from said remote control (12) for said master control (14), and for converting status signals received from said master control (14) for transmission back to said remote control [0020, 0033, 0043].

Although the figures of Crumb do not show a memory in the remote control module (12), these features are conventional in the design of microprocessor based remote controller and would have been obvious in the system of Crumb, to one of ordinary skill in the art. Most microprocessors have its own internal memory used to store data. Obviously, the microprocessor (18) of the remote control module of Crumb has internal memory because this is where control signal resides, as well as status information received from the master control module (14).

In claim 2, the mode button of the remote control selects a spa function to be controlled [0034, 0035, 0039].

In claim 3, the selected spa function to be performed by the main control is caused to be displayed on the display of the remote control by information sent by the main control [0034, 0037, 0040].

In claim 4, the control buttons when activated, transmits command signals displayed on the remote control [0034, 0037].

In claims 5 and 9, said remote control (12) includes an RF transceiver (16) coupled between an output of said microprocessor (18) and said first antenna [0018].

In claims 6 and 8, the plurality of control buttons on said remote control (12) comprise two push-buttons (figure 4A) [0034].

Claim 7 recites the combination of claims 21 and 2-4 and therefore rejected for the same reasons.

Claims 10-15 and 17-20 recites a method for practicing the system of claims 21 and 2-6 and therefore rejected for the same reasons.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Contact Information***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Bangachon whose telephone number is 571-272-3065. The examiner can normally be reached on 4/4/10.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9314

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for regular and After Final formal communications. The examiner's fax number is 571-273-3065 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

**ALBERT K. WONG**  
**PRIMARY EXAMINER**



William L. Bangachon  
Examiner  
Art Unit 2635

July 11, 2005